



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
(Case No. 98-009-B1)**

<b>In the Application of:</b>	)	
<b>Rodgers, et al.</b>	)	
	)	<b>Examiner: Anish Gupta</b>
<b>Serial No.: 09/658,315</b>	)	
	)	<b>Group Art Unit: 1654</b>
<b>Filing Date: September 8, 2000</b>	)	
	)	<b>Confirmation No.: 3507</b>
<b>For: Method of Promoting Erythropoiesis</b>	)	

Commissioner for Patents  
PO Box 1450  
Alexandria, Virginia 22313-1450

**Request for Reconsideration of Patent Term Adjustment Determination**

Dear Sir:

Responsive to the Determination of the Patent Term Adjustment under 35 U.S.C. §154(b) mailed on January 10, 2007, Applicants submit this Application for Adjustment to the Patent Term under 37 C.F.R. § 1.705(b). Applicants also submit the required fee under 37 C.F.R. § 1.18(e) along with this Application for Adjustment to the Patent Term. A Determination of the Patent Term Adjustment was mailed with the Notice of Allowance on January 10, 2007. This Determination stated that the Patent Term Adjustment would increase the term of the patent by 765 days. The details of this calculation from the Patent Application Information Retrieval (PAIR) System indicate that the Patent Office is charged with two incidents of delay totaling 1055 days and Applicants are charged with three incidents of delay totaling 290 days, resulting in the calculated 765 days of Patent Term Adjustment. Applicants believe there to be several errors in the calculation of this patent term adjustment as detailed below.

In the first incident of Applicant delay, the Applicants are charged 70 days for responding to the first Office Action 3 months and 70 days after mailing of the respective action (CFR 1.704 (b)). This appears to be correct. In the second incident the Applicants are charged 208 days for the time between the mailing of the second Office Action (11/15/02) and the filing of a response to the action. During this time a Notice of Abandonment for Failure to Respond to an Office Action was mailed (7/1/03), however the Applicants had not only filed a timely response to the office action on 2/10/03, but had received the return receipt postcard which had been time stamped as received by the Patent Office. The Applicants submitted copies of the originally filed response, the Express Mail receipt and the return receipt postcard stamped by the Patent Office, along with a Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a) on 9/11/03. The Petition was granted and a Notice to Rescind Abandonment was mailed on 7/25/06. Thus Applicants do not believe they should be charged with a delay, as the initial response to the second office action was filed within the 3 months allowed for reply (37 CFR 1.702(b)) and was received by the Patent Office as demonstrated by the stamped return receipt postcard. In the third incident the Applicants are charged 12 days for filing an Information Disclosure Statement 12 days after filing a response to the third office action (37 CFR 1.704 (c)(8)). The third incident appears to be correct. Applicants submit this Application for Adjustment to the Patent Term to request reinstatement of the 208 days related to the second incident subtracted when calculating the patent term adjustment. Thus, Applicants should be charged with only two incidents of delay totaling 82 days.

In the first incident of examination delay, the Patent Office mailed the first Action 14 and 126 days after the date on which the application was filed (37 CFR 1.703(a)(1)) resulting in a delay of 126 days. Applicants believe this to be correct. In the second incident, according the Patent Office records, the Patent Office delayed examination by mailing an Office Action 4 months and 929 days

after the date a reply was filed (37 CFR 1.703(a)(2)). Applicants believe this to be an error related to the previous error outlined above. Currently the Patent Office is calculating the 4 months and 929 days from the date the Petition to Withdraw Holding of Abandonment was filed with the previously filed Office Action Response. The petition and accompanying papers were filed by the Applicant on 9/11/2003 and the Patent Office mailed the next action 4 months and 929 days later on 7/28/06. However, the Applicants initially filed the Office Action Response on 2/10/03 by Express Mail and the response was received by the Patent Office as evident by the return receipt postcard stamped by the Patent Office (see attached). Thus the Patent Office mailed the next action 4 months and 1144 days after the date a reply was filed. Applicants submit this Application for Adjustment to the Patent Term to request reinstatement of an additional 215 days related to the second examination incident. Thus, the Patent Office should be charged with two incidents of delay totaling 1270 days.

The details of the correct Patent Term calculation should be as follows: the Patent Office should be charged with two incidents of delay totaling 1270 days and Applicants should be charged with two incidents of delay totaling 82 days, resulting in a calculated 1188 days of Patent Term Adjustment.

Applicants are including copies of The Petition to Withdraw Holding of Abandonment, the originally filed second Office Action Response mailed 2/10/03 along with the Express Mailing receipts and the stamped return receipt sent by the Patent Office detailed the receipt of the response on 2/10/03. Accordingly, Applicants believe they engaged in reasonable efforts to conclude prosecution of the application in this incident.

Because the Response to the second Office Action was in fact filed (2/10/03) within the three month time limit for responding to the Office Action dated 11/15/02 and was received by the Patent Office, Applicants respectfully request reconsideration of the patent term adjustment and

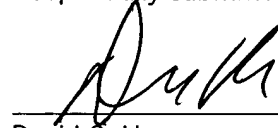
reinstatement of the 208 days subtracted from the adjustment and the 215 days not previously added. If this Application for Adjustment to the Patent Term is granted, the patent term adjustment would be 1188 days. Applicants further note that a Terminal Disclaimer was filed in the above referenced case.

If a telephone conference would expedite the prosecution of this Application for Patent Term Adjustment, please call Applicant's undersigned representative at 312-913-2106.

Date: 3/7/07

Telephone: 312-913-0001  
Facsimile: 312-913-0002

Respectfully submitted,



David S. Harper  
Registration No. 42,636  
McDonnell, Boehnen, Hulbert, & Berghoff LLP  
300 South Wacker Drive, 29th Floor  
Chicago, IL 60606